

UT 07-1

Tax Type: Use Tax

Issue: Tangible Personal Property

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

JOHN DOE,	}	No.	06-ST-0000
Taxpayer		IBT:	0000-0000
v.			
THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS	}	John E. White,	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: *John Doe* appeared *pro se*; John Alshuler, Special Assistant Attorney General, appeared for the Illinois Department of Revenue.

Synopsis: This matter arose when *John Doe* (*Doe* or taxpayer) protested a Notice of Tentative Denial of Claim for Sales Tax (Denial) the Illinois Department of Revenue (Department) issued to him after he filed an amended return seeking a refund of the tax he paid to the Illinois retailer from whom he purchased a 2004 Subaru on September 11, 2004. The issue is whether taxpayer is entitled to a refund of the use tax he paid for the Subaru. At the first status conference, taxpayer asked that the matter be resolved without hearing, and based on documents he submitted to the Department, together with the Department's Denial. The Department did not object to *Doe*'s request, except to assert that the documents tendered by taxpayer establish that the tax he paid when he purchased the Subaru was properly due for use of the vehicle in Illinois.

I have reviewed the documents submitted by taxpayer, and I am including in this recommendation findings of fact and conclusions of law. I recommend that the issue be resolved in favor of the Department, and that the Denial be finalized as issued.

Findings of Fact:

1. On September 11, 2004, *Doe* purchased a 2004 Subaru from an Illinois retailer. Taxpayer Ex. 4 (copy of ST-556, Sales Tax Transaction Return, dated 9/11/04).
2. *Doe* paid Illinois use tax to the retailer in the amount of \$1,429.02. Taxpayer Exs. 1 (copy of 11/14/06 letter from *Doe* to IDOR), 4.
3. At the first and only status conference held in this matter, *Doe* advised that he purchased the Subaru so his daughter could use it while she attended school in Illinois.
4. *Doe* listed an Illinois address on the return the Illinois retailer prepared, and which both the retailer and *Doe* signed. Taxpayer Ex. 4.
5. *Doe* subsequently had the vehicle relocated from Illinois to New York in September 2005. Taxpayer Ex. 2 (copy of 3/24/06 letter from *Doe* to IDOR); Taxpayer Ex. 3 (copy of receipt for payment of New York sales tax). *Doe* registered the Subaru in New York, and paid a tax in the amount of \$1,591.25. Taxpayer Ex. 3.

Conclusions of Law:

Illinois' Use Tax Act (UTA) imposes a tax "upon the privilege of using in this State tangible personal property purchased at retail from a retailer" 35 ILCS 105/3. The Illinois General Assembly incorporated into the UTA certain provisions of the Retailers' Occupation Tax Act (ROTA). 35 ILCS 105/11. Among them is § 7 of the ROTA, which provides that "It shall be presumed that all sales of tangible personal property are subject to tax under this Act until the contrary is established, and the burden of proving that a transaction is not taxable hereunder shall be on upon the person who

would be required to remit the tax to the Department if such transaction is taxable.” 35

ILCS 120/7. Additionally, § 19 of the UTA provides, in pertinent part:

§ 19. If it shall appear that an amount of tax or penalty or interest has been paid in error hereunder to the Department by a purchaser, as distinguished from the retailer, whether such amount be paid through a mistake of fact or an error of law, such purchaser may file a claim for credit or refund with the Department in accordance with Sections 6, 6a, 6b, and 6c of the Retailers' Occupation Tax Act. ***

35 **ILCS 105/19.** Thus, tax is paid in error only if it is paid when not due. *Id.*

The parties agreed that Department Exhibit 1, consisting of a copy of the NTL, would be one of the documents upon which this matter would be decided. Department Ex. 1. That exhibit, without more, constitutes prima facie proof that **Doe** was not entitled to a refund of the use tax that he paid when he purchased the Subaru in 2004. 35 **ILCS 105/20.**

I agree with the Department that none of the documents **Doe** produced show that he paid use tax that was not properly due. **Doe** purchased the vehicle at retail, in Illinois, from an Illinois retailer. Taxpayer Ex. 4; 35 **ILCS 105/3.** **Doe** used the vehicle in Illinois from September 2004, when it was purchased, until September 2005, when it was relocated to and registered in New York. Taxpayer Exs. 3-4; 35 **ILCS 105/1** (definition of use). The evidence establishes that use tax was properly due. 35 **ILCS 105/3.** Therefore, **Doe** did pay that tax in error, and no refund is due. 35 **ILCS 105/19.**

Conclusion:

I recommend that the Director finalize the Denial as issued.

Date: 1/8/2007

John E. White
Administrative Law Judge